

RESOLUTION NO.

Resolution of the Planning Commission of the City of San José approving a Conditional Use Permit to use certain real property described herein for the purpose of allowing demolition and construction of a drive-through fast-food restaurant (Taco Bell & Pizza Hut) totaling 2,414 square feet on a 0.42 gross acre site.

FILE NO. CP02-068

BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSÉ:

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on November 12, 2002, an application (File No. CP02-068) was filed for a Conditional Use Permit for the purpose of allowing demolition of an existing fast food restaurant and construction of a new 2,414 square feet fast-food restaurant (Taco Bell & Pizza Hut) with a drive-through use on a 0.42 gross acre site, on that certain real property (hereinafter referred to as "subject property"), situate in the CN-Commercial Neighborhood Zoning District, located at west side of Camden Avenue at the westerly terminus of Kooser Road, San José, and

WHEREAS, the subject property is all that real property described in Exhibit "A," which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, this Planning Commission has reviewed and considered a Negative Declaration for said project; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, this Planning Commission conducted a hearing on said application, notice of which was duly given; and

WHEREAS, at said hearing, this Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a development plan for the subject property entitled, "Taco Bell Pizza Hut," dated 7/23/03. Said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

NOW, THEREFORE:

After considering evidence presented at the Public Hearing, the Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram
2. The project site is located on a 0.42 -gross-acre parcel in the CN Commercial Neighborhood Zoning District, which will be effective September 26, 2003.
3. The project site is currently developed with an existing Taco Bell Restaurant that does not have a drive-through pick-up window.
4. The proposed restaurant has a front setback of 27 feet.
5. The project site as proposed requires 25 parking spaces. 11 spaces are provided on the site while the remainder of the parking spaces would be provided through reciprocal parking agreements with the adjacent shopping center.
6. The proposed drive-through lane provide stacking for up to 12 vehicles.
7. The egress for the drive-through lane is located on Camden Avenue, 80 feet from the centerline of the terminus of Kooser Avenue.
8. Commercial uses are adjacent on all sides of the site except across Camden Avenue to the southeast.
9. Single-family houses area located approximately 130 feet to the south of the proposed drive-through lane.
10. The City Council Policy for Drive-Through Uses and the Commercial Design Guidelines recommend that drive-through uses be located at least 200 feet from residential uses to provide a buffer to avoid or reduce potential noise impacts .
11. Commercial Design Guidelines recommend the cooperation with adjacent parcels for cross access purposes.
12. The proposed project shares access or a driveway with one adjacent commercial parcel to the south.
13. The proposed hours of operation are from 9:00 a.m. to 10:00 p.m. for the drive through use and 9:00 a.m. to 12:00 midnight for the restaurant.
14. The City Council Policy for Drive-Through uses recommend that drive through use components of project near residential projects close by 10:00 p.m.
15. The noise report determined that the noise generated from Camden Avenue was greater than that from the speaker for the drive through use. A Supplemental Noise Report was submitted on August 27th 2003 to better address potential noise impacts from vehicles associated with the drive through use. The analysis of the report indicates that the noise

level due to speaker box, vehicle engine noise and typical car stereo noise would be below the City's maximum noise standards.

16. The proposed project has an adopted Mitigated Negative Declaration.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the site's designation of Neighborhood/Community Commercial on the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with applicable provisions of the Zoning Ordinance.
3. The proposed project conforms to the intent of the Commercial Design Guidelines.
4. The proposed project conforms to the intent of the City Council Policy for Drive-Through Uses.
5. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. As conditioned, the proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit, except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the

owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Except as noted in Condition # 2, development of the site shall conform to the approved development plans entitled "Taco Bell Pizza Hut," dated 7/23/03, on file with the Department of Planning Building and Code Enforcement.
2. **Signs.** No signs are approved at this time. Within 90 days of the issuance of this permit, and to the satisfaction of the Director of Planning, the developer shall secure a Permit Adjustment for a comprehensive sign program that conforms to the City's Sign Ordinance. The proposal shall also include a sign for placement adjacent to the drive through lane which encourages all patrons to turn down the audio level of their car stereos while on the premises in order to reduce noise impacts to nearby residential uses.
3. **Discretionary Review.** The Director of Planning maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Planned Development Permit incorporated by reference in this Permit in accordance with Section 20.44.200 of the San José Municipal Code.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Hours of Operation.** The proposed restaurant may operate between the hours of 6:00 a.m. and 12:00 midnight. The drive through use shall be restricted to operate during the hours of 9:00 a.m. to 10:00 p.m..
6. **Restriction on Deliveries.** The delivery hours shall be limited to 9:00 a.m. and 5:00 p.m. on Monday-Friday, 9:30 a.m. and 3:30 p.m. on Saturdays, and 11:00 a.m. and 3:30 p.m. on Sundays. The operator shall encourage deliveries at times that do not conflict with peak restaurant hours.

7. **No Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
8. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
10. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
11. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE - NO PARKING," shall be provided to the satisfaction of the Fire Chief.
12. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
 - a. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
 - b. *Construction Plans.* This permit file number, CP02-68, shall be printed on all construction plans submitted to the Building Division.
 - c. *Demolition Permit.* Obtainment of a Demolition Permit is evidence of acceptance of all conditions specified in this document and the applicant's intent to fully comply with said conditions. No demolition of the structure may be implemented unless and until the Building Division issues a Demolition Permit pursuant to Section 301 of the Uniform Building Code, as adopted pursuant to the provisions of Chapter 17.04 of Title 17 of the San José Municipal Code.
13. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-04412) to the satisfaction of the Director of Public Works:
 - a) **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b) **Geology:** A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
 - c) **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Camden Avenue prior to issuance of a Public Works clearance. 100 percent of the base fee in place at the time of payment will be due. (Currently, the base fee is \$112 per linear foot of frontage, however is subject to change in the near future.)

- d) **Electrical:** Install electrolier(s) along the project frontage to the satisfaction of the Director of Public Works. Locate and protect existing electrical conduit in driveway and/or sidewalk construction. Provide clearance for electrical equipment from driveways, and relocate driveway or electrolier. The minimum clearance from driveways is 10' in commercial areas and 5' in residential areas. Replace existing HPS luminaires in electroliers along project frontage with LPS luminaires.
 - e) **Landscape:** Install street trees within the public right-of-way along the entire street frontage per City standards. The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only. Contact the City Arborist at (408) 277-2756 for the designated street tree.
 - f) **Street Improvements:** Applicant shall be responsible to remove and replace curb, gutter, and sidewalk damaged during construction of the proposed project. Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage. Street improvements to be constructed to the satisfaction of the Director of Public Works. Close unused driveway cut(s). Proposed driveway width to be 26'. Traffic movement from the southerly proposed driveway shall be limited to right-turn egress only.
 - g) **Minor Improvement Permit:** The applicant will be required to satisfy all Public Works conditions prior to the issuance of a Public Works Clearance. The clearance will require the execution of a Minor Street Improvement Permit that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This permit includes plans, insurance, bonds/deposit certificate, and engineering and inspection fees.
14. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
15. **Street Cleaning and Dust Control.** During construction, the developer shall damp sweep the public and private streets within and adjoining the project site each working day sufficient to remove all visible debris and soil. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site.
16. **Storm Water Discharge.** The applicant shall conform to the Non-Point Source Control requirement for storm water discharge associated with construction activity as required by the State Water Resource Control Board. Contact the Regional Water Quality Control Board at (415) 286-0968 for further information.

17. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
18. **Irrigation Standards.** The applicant shall install an adequately sized irrigation distribution system with automatic controllers in all areas to be landscaped that conforms to the Zonal Irrigation Plan in the Approved Plan Set and is consistent with the City of San José Landscape and Irrigation Guidelines. The design of the system shall be approved and stamped by a California Registered Landscape Architect.
19. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning
20. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.
21. **Lighting.** All new outdoor lighting on the site shall conform to the City's Outdoor Lighting Policy and shall use low-pressure sodium (LPS) lighting fixtures.
22. **Colors and Materials.** All building colors and materials are to be those specified on the approved plan set.
23. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
24. **Amplified Sound.** No amplified sound shall be audible from adjacent properties. All outdoor paging of employees shall be achieved with individual devices given to employees. No outdoor paging systems are to be installed.
25. **Mechanical Equipment.** All roof equipment shall be screened from view.
26. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of

adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.

2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.

ADOPTED and issued this 10th day of September, 2003, by the following vote:

AYES: JAMES, CAMPOS, DHILLON, PLATTEN, ZAMORA, ZITO

NOES: LEVY

ABSENT: NONE

DISQUALIFIED: NONE

Chairperson

ATTEST:

Stephen M. Haase, Secretary

Deputy

NOTICE TO PARTIES

The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.